THE HON'BLE MR. JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.21972 of 2006

Date:17.12.2007

Between:
Hussain Khan

… Petitioner

AND
The State of Andhra Pradesh, through its
Secretary for Housing, Municipal Administration
and Urban Development (A2) Department,
Secretariat, Hyderabad and three others.

… Respondents

Counsel for the petitioners: Sri Mohd.Ghulam Hussain

Counsel for the respondents: Asst. Govt. Pleader for Housing and
Municipal Administration for R.1
Smt.M.Venkateswari for R.2.

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THE HONOURABLE MR.JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.21972 of 2006

ORDER:-

This Writ Petition is filed for a Writ of Mandamus to declare the inaction of respondent No.1 in complying with the directions contained in order dated 5-10-1993 passed by this Court in Writ Petition No.11547 of 1988 as illegal, arbitrary, null and void. The petitioner also sought for a consequential direction to comply with the said order.

The petitioner in his affidavit filed in support of the Writ Petition pleaded that he, along with his brothers, is the owner and possessor of land admeasuring Ac.1.15 guntas and Ac.0.25 guntas in Survey Nos.137 and 139 (Old Survey No.27) respectively, situated at Yousufguda, Hyderabad; that the total area of Survey No.137 is Ac.10.03 guntas; that one Nawab Rayees Yar Jung, the original owner of the said property, sold an extent of Ac.2.00 to his mother late Khatoon Bi W/o.Rahman Khan through sale deed dated 17-6-1957; and that after the death of Nawab Rayees Yar Jungm, his son Nawab Mir Fazeelath Hussain confirmed the sale made in favour of his mother by executing agreement of assignment dated 28-10-1994. The petitioner further pleaded that Nawab Mir Fazeelath Hussain succeeded to the adjoining land comprised in Survey Nos.52, 53, 189 and 139 etc., and he sold an extent of Ac.32.15 guntas to respondent No.4; that the petitioner's land is on the western side of the land purchased by respondent No.4; and that his land is excluded in the sale deed executed by Nawab Mir Fazeelath Hussain and also in the layout got sanctioned by

respondent No.4. It is further averred by the petitioner that on his land of Ac.0.25 guntas in Survey No.137 there is a old dilapidated water reservoir, which was not in use for a long time and the original owner Nawab Rayees Yar Jung sold the land covered by the said water reservoir to his mother, in pursuance of which she had been in possession of the said property; and that the petitioner's mother died recently and, thereafter, he is in possession of the said reservoir land. The petitioner also averred that when respondent No.4 and other unconcerned persons were making efforts to encroach upon and forcibly occupy the said land and respondent No.2 was planning to construct water reservoir on the said land by using his official status, Nawab Mir Fazeelath Hussain filed civil suits against respondent No.4, and one of the appeals arising out of such civil suits, viz., CCCA No.105 of 1999 is pending in this Court. It is the further case of the petitioner that respondent No.1 issued G.O.Rt.No.38, Municipal Administration Department dated 8-1-1988, whereunder respondent No.2 was permitted to take up the piece of land on which the old reservoir was existing for construction of water tank; that Nawab Mir Fazeelath Hussain filed Writ Petition No.11547 of 1988 in this Court and that the same was disposed of on 5-10-1993 by setting aside G.O.Rt.No.38, dated 8-1-1988, and directing 1st respondent to issue notices to the petitioner therein (Mirza Fazeelat Hussain), respondent No.4-Society and the concerned planning section of Municipal Corporation of Hyderabad, and decide after affording an opportunity to them whether the property in question was a part of sale made in favour of respondent No.4-Society and if it is found that the property in question was not the subject matter of sale deed executed in favour of respondent No.4 and not

included in the lay out, compensation has to be paid to the petitioner by initiating proceedings under the Land Acquisition Act, 1894; and that the said exercise shall be completed within a period of four months from the date of receipt of the said order.

It is further averred that though Nawab Mir Fazeelath Hussain and the mother of the petitioner approached respondent No.1 several times bringing to its notice the further developments that have taken place due to filing of civil suits, the reports of the Advocate-Commissioner etc., no action has been taken. It is also stated that as the respondents stopped their illegal attempts to occupy the said land for construction of reservoir/tank, and the petitioner's mother fell sick and died later, and the litigation was pending in the civil Court, the petitioner could not pursue the matter and that when recently respondent No.2 again commenced the illegal activities by trying to construct water tank in the place of dilapidated old reservoir, the petitioner constrained to approach this Court.

Sri R.Anil Paul, Assistant Secretary to Government, Municipal Administration & Urban Development Department, filed a counter-affidavit on behalf of respondent No.1 in which he raised the plea that the Writ Petition suffers from unexplained delay and laches and also questioned the maintainability of the Writ Petition for seeking implementation of the earlier judgment of this Court. The counter-affidavit has denied the plea of the petitioner that the land covered by the water reservoir was sold by the original owner to the mother of the petitioner and she had been in possession of the property. The deponent relied upon inspection report dated 1-9-1994 sent by respondent No.3 to respondent No.1, wherein it was mentioned that the area covered by the water tank is situated in the approved lay out of

respondent No.4-Society, concerning Venture No.1 of Yousufguda, Hyderabad, and the same was ear-marked as open space in the approved lay-out. Respondent No.1, therefore, questioned the claim of the petitioner to claim compensation in respect of open space ear-marked in the lay-out meant for public purpose. It is also mentioned that the mother of the petitioner filed O.S.Nos.1654 and 1655 of 1985 on the file of IV Senior Civil Judge, City Civil Court, Hyderabad, for declaration of title and recovery of compensation; that they were dismissed on 31-8-1988; that CCCA No.88 of 1999 filed against the judgment and decree in O.S.No.1654 of 1988 was disposed of on 30-6-2006; and that another suit i.e., O.S.No.137 of 2002 filed by the mother of the petitioner for declaration of her title and perpetual injunction against respondent No.2 and 4 was dismissed on 21-4-2004 on the ground that the same was barred by principle of *res judicata*. It is further stated that in pursuance of G.O.Rt.No.38, dated 8-1-1988 respondent No.2 has taken up the construction work in the dilapidated reservoir and completed the same; and that pipe lines were also laid in the old reservoir and water is being supplied to the surrounding areas of respondent No.4-Society. It is further stated that in compliance with the order dated 5-10-1993 of this Court in Writ Petition No.11547 of 1988 respondent No.1 gave notice to Nawab Mir Fazeelath Hussain (Petitioner in Writ Petition No.11547 of 1988) and respondent No.4-Society to submit documentary evidence, including sale deeds and approved layout etc., in support of their case on 25-8-1995 at 11 AM before the then Secretary to Government, Municipal Administration and Urban Development Department, vide Government Memo dated 16-8-2995; that the meeting was held

on the said date; and that after considering the pleas of the respective parties certain instructions appeared to have been given to the Managing Director, Hyderabad Metropolitan Water Supply and Sewerage Board to examine the documents and give suitable reply to the petitioner, keeping in view order dated 5-10-1993 passed in Writ Petition No.11547 of 1988. It is stated that the file containing the said instructions was destroyed after expiry of five years as per the procedure contained in the Secretariat Office Manual and, therefore, the file was not available. It is further stated that the General Manager (Engineering), Hyderabad Metropolitan Water Supply and Sewerage Board examined the claim and gave reply to the mother of the petitioner vide: letter dated 18-5-1999 stating that the survey report clearly revealed that the land in question is part of lay-out and, as such, there is no question of initiating land acquisition proceedings and payment of compensation. It is further averred that during the life time of the mother of the petitioner she filed three civil cases and one civil appeal and she could not produce any documentary evidence to substantiate her claim; and that the petitioner is asserting his claim without there being any valid documentary evidence.

Sri M.Konda Reddy, General Manager (Engineering) Division VI, Hyderabad Metropolitan Water Supply and Sewerage Board, filed a counter-affidavit on behalf of respondent No.2, wherein an identical stand contained in the counter-affidavit filed on behalf of respondent No.1 has been taken. It is further asserted that in the common judgment dated 31-8-1988 rendered in O.S.Nos.1654 and 1655 of 1988, the civil Court held that the land in dispute belongs to and in possession of Hyderabad Metropolitan Water Supply and Sewerage Board.

The petitioner filed a reply-affidavit, in which he has

taken the plea that since the cause of action is recurring and a continuous one, respondent No.1 is not absolved of his obligation to comply with the order passed in Writ Petition No.11547 of 1988 by passage of time. He denied the claim of respondent No.1 that notices were issued to 'petitioner' and respondent No.4 and claimed lack of knowledge of inspection report dated 1-9-1994 of respondent No.3.

Heard Sri Mohd.Ghulam Hussain, learned counsel for the petitioner, learned Assitant Government Pleader for Municipal Administration & Urban Development for respondent No.1 and Smt.M.Venkateswari, learned Standing Counsel for Hyderabad Metropolitan Water Supply and Sewerage Board for respondent No.2.

From the pleadings of the petitioner, as referred to above in detail, his case is that his mother purchased the disputed land from its original owner Nawab Rayees Yar Jung under sale deed dated 17-6-1957; and that, after his death, his son Nawab Mir Fazeelat Hussain executed agreement of assignment on 28-10-1994. The petitioner has not filed any documentary evidence in support of the said assertions. As per the petitioner's own pleading, Writ Petition No.11547 of 1988 was filed by Nawab Mir Fazeelat Hussain, who is the son and successor in interest of Nawab Rayees Yar Jung. If the mother of the petitioner purchased the property in dispute, one fails to understand as to why the son of the original owner filed the said Writ Petition claiming relief in respect of the property, which was allegedly purchased by the mother of the petitioner. The petitioner failed to give any explanation, whatsoever, in this regard. The very fact that the petitioner's mother, who allegedly purchased the property as far back as 17-6-1957, has not

approached this Court earlier and, on the other hand, the successor in interest of the original owner of the property filed the earlier Writ Petition ex facie improbablizes the case of the petitioner that his mother was the exclusive owner of the property in dispute. It is not in dispute that this Court disposed of Writ Petition No.11547 of 1988 filed by Nawab Mir Fazeelat Hussain, set aside G.O.Rt.No.38 dated 8-1-1988 and directed respondent No.1 to determine the issue whether the property in question was part of the sale made in favour of respondent No.4-Society. If respondent No.1 has not complied with the said order, the petitioner therein (Nawab Mir Fazeelat Hussain) alone would have locus to initiate appropriate proceedings to ensure its compliance. It is not the pleaded case of the petitioner that Nawab Mir Fazeelat Hussain authorized the petitioner to file the present Writ Petition. I am, therefore, of the considered view that the petitioner has absolutely no locus standi to file the present Writ Petition seeking compliance of order dated 5-10-1993 passed in Writ Petition No.11547 of 1988.

In the counter-affidavit filed on behalf of respondent No.1 reference to certain civil suits filed by the mother of the petitioner was made and it was specifically pleaded that the suits filed by her were dismissed and the appeal filed against the judgment in one of the suits was also disposed of on 30-6-2006. The petitioner, for the reasons best known to him has not adverted to this aspect in his reply affidavit. As a fact, even in his affidavit he made a vague reference to a suit filed by Nawab Mir Fazeelat Hussain and pendency of CCCA No.105 of 1999. The fact that the petitioner failed to deny the averment relating to filing of suits by his mother shows that the said allegation is evidently correct and the petitioner deliberately suppressed the said facts without raising specific pleading in his affidavit.

I am, therefore, convinced that the petitioner has not come to this Court with clean hands. Moreover, as rightly submitted by the learned Assistant Government Pleader for Municipal Administration, that this Writ Petition is filed almost 14 years after disposal of Writ Petition No.11547 of 1988 and, therefore, it suffers from inordinate delay and laches. The plea that the cause of action is recurring is without any merit and the petitioner failed to give any satisfactory explanation whatsoever for the enormous delay of 14 years in filing this Writ Petition. The law is well settled by a catena of decisions that stale claims cannot be entertained by the High Court while exercising discretionary jurisdiction under Article 226 of the Constitution of India and long and unexplained delay in approaching the Court disentitles a party to any relief. (See the decisions of the Supreme Court in **STATE OF MADHYA PRADESH V. BHAILAL BHAI**[1] **, TILOKCHAND V. H.B.MUNSHI**[2] **, MAFATLAL INDUSTRIES LTD. V. UNION OF INDIA**[3] **and R.S.DEODHAR V. STATE OF MAHARASHTRA**[4]**).**

For the aforementioned reasons, the Writ Petition is dismissed.

C.V.NAGARJUNA REDDY,J
17-12-2007

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1) AIR 1964 SC 1006
2) AIR 1970 SC 898
3) JT 1996(11) SC 283

4) AIR 1974 SC 259.